

BEFORE THE ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

W. DALE FINKE, Director Department
of Insurance, State of Missouri,

Petitioner,

v.

VIRGIL LEE JACKSON,

Respondent.

Case No. 05-1829 DI

051222441C

ANSWER TO FIRST AMENDED COMPLAINT

COMES NOW Respondent, by and through counsel, and for his answer to the First Amended Complaint filed against him by the Missouri Department of Insurance states as follows:

1. Respondent admits that Petitioner is the Director of the Missouri Department of Insurance. As to the duties of the Director as defined by Chapter 374 R.S.Mo., said Chapter speaks for itself and any allegations relating to the Director's duties under Chapter 374 constitute legal conclusions, which Respondent has no duty to either admit or deny.
2. Respondent admits the allegations contained in paragraph 2.
3. As to the allegations contained in paragraph 3, said allegations constitute a legal conclusion which Respondent has not duty to either admit or deny.

COUNT I

4. Paragraph 4 is a legal conclusion, which Respondent is not required to admit or deny. However, to the extent that paragraph 4 is perceived to contain any statement of fact, Respondent denies the allegations contained in paragraph 4.

5. Respondent denies paragraph 5, subparts 5(a) through 5(c) inclusive.

COUNT II

6. Paragraph 6 is a legal conclusion, which Respondent is not required to admit or deny. However, to the extent that paragraph 6 is perceived to contain any statement of fact, Respondent denies the allegations contained in paragraph 6.

7. Respondent denies paragraph 7, subparts 7(a) through 7(b) inclusive.

8. Paragraph 8 is a legal conclusion, which Respondent is not required to admit or deny. However, to the extent that paragraph 8 is perceived to contain any statement of fact, Respondent denies the allegations contained in paragraph 8.

COUNT III

9. Paragraph 9 is a legal conclusion, which Respondent is not required to admit or deny. However, to the extent that paragraph 9 is perceived to contain any statement of fact, Respondent denies the allegations contained in paragraph 9.

10. Respondent denies the allegations contained in paragraph 10, including those allegations contained in subparts 10(a) through 10(e) inclusive. By way of further answer, Paragraph 10 contains no allegation that Respondent secured a general bail bond agent license from the Department of Insurance as required for a violation of §374.755.1(3) R.S.Mo. to occur. Rather, Petitioner alleges in paragraph 10(e) of the First Amended Complaint that the Director refused to issue a general bail bond license to Respondent. Therefore, Petitioner has failed to state a claim for discipline under §374.755.1(3) R.S.Mo in Count III of the First Amended Complaint.

COUNT IV

11. Paragraph 11 is a legal conclusion, which Respondent is not required to

admit or deny. However, to the extent that paragraph 11 is perceived to contain any statement of fact, Respondent denies the allegations contained in paragraph 11.

12. Respondent denies the allegations contained in paragraph 12, including those allegations contained in subparts 12(a) through 12(b) inclusive. By way of further answer, the allegations contained in subpart 12(c) are legal conclusions, which Respondent is not required to admit or deny. However, to the extent that subpart 12(c) of paragraph 12 is perceived to contain any statement of fact, Respondent denies the allegations contained in subpart 12(c).

AFFIRMATIVE DEFENSES

By way of further answer, Respondent raises the following affirmative defenses:

1. The Complaint fails to set forth those provisions of the law that allow discipline for the facts set forth in the Complaint as required by 1 CSR 153.350(2)(A)(4).
2. The Complaint fails to allege facts supporting the relief the agency seeks with sufficient specificity so as to enable Respondent to address the charge(s) at hearing as required by 1 CSR 15-3.350(2)(A)(3).
3. The Complaint is vague, ambiguous, uncertain, and indefinite and fails to inform the Respondent of the nature and cause of the accusations against him.
4. The Complaint does not include a plain and concise statement of the essential facts giving rise to the purported violation(s) of §374.755.1 R.S.Mo. so as to permit Respondent to adequately address the charge(s) at hearing. As a result, the Complaint fails to allege facts constituting any violation of §374.755.1(2), (3) and/or (6) R.S.Mo. so as to justify discipline in this matter.
5. The Complaint is vague, ambiguous, uncertain, and indefinite and fails to

inform the Respondent of the nature and cause of the accusations against him.

6. Section 374.755.1 (including its applicable subparts (2), (3) and (6)) is vague, indefinite, ambiguous, uncertain and fails to specifically inform the Respondent as to what conduct the legislature of the State of Missouri intended to prohibit by the enactment of said statute, and therefore, is unconstitutionally vague and overbroad both on its face and as applied to the Respondent in this case.


7. Section 374.702 (including its applicable subparts (1) and (5)) is vague, indefinite, ambiguous, uncertain and fails to specifically inform the Respondent as to what conduct the legislature of the State of Missouri intended to prohibit by the enactment of said statute, and therefore, is unconstitutionally vague and overbroad both on its face and as applied to the Respondent in this case.

8. Section 374.710 (including its applicable subpart (1)) is vague, indefinite, ambiguous, uncertain and fails to specifically inform the Respondent as to what conduct the legislature of the State of Missouri intended to prohibit by the enactment of said statute, and therefore, is unconstitutionally vague and overbroad both on its face and as applied to the Respondent in this case.

WHEREFORE, having fully answered each and every count of the Complaint filed against Respondent, Respondent prays that the Complaint and each and every count contained therein be dismissed with prejudice, for an award of attorney's fees in favor of Respondent and against Petitioner, and for such other and further relief as the Administrative Hearing Commission deems just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was faxed this 6th day of July, 2006 to Stephen R. Gleason, Senior Counsel, Missouri Department of Insurance, P.O. Box 690, Jefferson City, MO 65102 to fax number 573-526-5492.

